(2013) 09 CAL CK 0125

In the Calcutta High Court

Case No : Writ Petition No. 2 of 2013

Sambhu Nath Agarwal APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 17-09-2013

Acts Referred:

Citation : (2014) 1 CHN 133

Hon'ble Judges : Aniruddha Bose, J

Bench : Single Bench

Advocate : Kalyan Bandopadhyay, Mr. Ram Anand Agarwal, Ms. Nibedita Pal and Mr. Ramesh Dhara, for the Appellant;Subrata Talukdar and Mr. T.M. Siddiqui, Advocates for the State, Mr. Sagar Bandopadhyay, Ms. Soma Kar Ghosh and Mr. Niladri Banerjee, Advocates for the Respondent Nos. 6 and 7, for the Respondent

Final Decision : Dismissed

Judgement

Aniruddha Bose, J.—The petitioner in this proceeding seeks mandatory direction upon the Food & Supplies Department, Government of West Bengal requiring them to appoint him as a dealer of a fair price shop bearing No. 3712 under the Haltu sub-area of this State. The shop in question is guided by the West Bengal Urban Public Distribution System (Maintenance & Control) Order, 2003. The said shop was being run in partnership by the petitioner with one Madhusudan Dey (since deceased). The wife and the son of said Madhusudan Dey have been impleaded as party respondent to these proceedings. Said Madhusudan Dey passed away on 26th November, 2012. On his death, the writ petitioner claims to have had approached the respondent Nos. 6 & 7 for joining him as partners for the purpose of running the same business under the existing license in terms of the aforesaid Control Order, but they did not accept such request. The petitioner thereafter had approached the Director of Rationing for his own appointment as licencee in respect of the same shop but the concerned authority has not appointed him as a fair price shop owner. On death of said Madhusudan Dey, the Rationing Officer and the ex Officio Assistant Director, Haltu had delinked all the cards tagged to the said shop and linked them with another dealer upon passing the following order:-

The FPS ? 3712, being licence No. H/273/04/FPS/3712/Haltu/KS/1958 Date is a partnership firm consisting of 2(Two) partners namely (1) Madhusudan Dey and (2) Sambhynath Agarwal. It is reported to me on 27/11/2012 by concerned Inspecting staff that one of the partners Madhusudan Dey expired on 26/11/2012.

Since it is partnership firm consisting of 2 (two) partners and one of the partner has already expired, therefore the partnership firm stands dissolved by operation of law.

In view of the above circumstances, all the Ration Cards of APL+BPL+AAY+ANP tagged with FPS 3712 are hereby delinked and relinked with FPS 3835 in the interest of P.D.S.

The same stand as reflected in the aforesaid delinking order has been taken on behalf of the state-respondents as well as the private respondents. On the aspect of filling up of vacancy on death of a fair price shop owner, there is a departmental guideline, however, for appointing the close family members of a deceased dealer on compassionate ground. This guideline was issued on 3rd July, 1985, under the then prevailing control order and it is stipulated therein:-

In the event of death of an A.R. or resignation tendered by an A.R. on ground of age, infirmity etc, the resultant vacancy need not be notified initially and it may be filled up by appointing the husband/wife/son/daughter of the deceased/ resigned A.R. if he or she is otherwise found suitable in all respects. In the absence of any such relation or in the event of such relation not willing to be appointed, the case of next of kin of such deceased/resigned A.R. may also be considered. All other formalities will, however, have to be observed before giving appointment to an A.R. In case no suitable candidate in the above category is available, the vacancy will be filled up in the usual manner after suitable notification therefor.

2. It is not in dispute the same principle as contained in the said guideline is still being followed for appointment on compassionate grounds the specified legal heirs of a deceased dealer under the 2003 Control Order. On behalf of the private respondents, however, it has been submitted that the licence in this case was granted in favour of a partnership firm and under the provisions of Section 42 of the Indian Partnership Act, 1932, the firm stood dissolved on death of said Madhusudan Dey. The aforesaid provisions stipulates:-

42. Dissolution of the happening of certain contingencies.-

Subject to contract between the partners a firm is dissolved-

(a) if constituted for a fixed term, by the expiry of that term;

(b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;

(c) by the death of a partner; and

(d) by the adjudication of a partner as an insolvent.

3. On behalf of the petitioner, it was argued by Mr. K.K. Bandopadhyay learned Senior Counsel that the petitioner at all material times had been willing to accommodate the private respondents in his business and had requested the respondent Nos. 6 & 7 to join him partners upon reconstituting the firm. Since they had declined the licence ought to be granted in favour of the petitioner in his name. Case has been made out on behalf of the petitioner that he, along with Madhusudan Dey (since deceased) were appointed as joint proprietors and in this regard a memorandum issued on 1st September, 2005, by which such appointment was given by the Director of Rationing, West Bengal has been relied upon. The copy of this document was made available to this Court, bearing memorandum No. 2030/1(4)/A-I, which stipulates:-

With reference to the above, Director of Rationing, West Bengal has been pleased to accept the unconditional resignation from Sri Madhusudan Dey, owner of A/R 3712 and terminates the previous appointment of him vide Memo No. I/CON-24C/11/IA-I, dated 07.12.85 and he also appoints Sri Madhusudan Dey and Shambhu Nath Agarwal as Joint proprietor of A/R. Shop No. 3712. Sub-area, Haltu.

4. On behalf of the petitioner, relying on the aforesaid document a distinction is sought to be drawn between a partnership firm and joint proprietorship business. It has been argued on behalf of the petitioner that in a case where license is granted in favour of two persons as joint proprietors, then the normal rule of dissolution of a firm shall not apply in case of death of one of them and the licence ought to vest in the name of the surviving proprietor. On this point an unreported judgment of this Court in W.P. No. 257 of 2007 (Amitava Datta Vs. State of West Bengal & Ors.) delivered on 9th April, 2012, has been relied on. This judgment dealt with a similar memorandum or circular guiding appointment of dealer under the West Bengal Kerosene Control Order, 1968. In that case also, there was a deed of partnership and the two persons, who were brother and sister held the licence in joint name. On death of the sister, the brother''s claim to continue as a dealer was not accepted by the authorities as the brother did not come within the specified list of relatives mentioned in the circular. This Court held:-

When a dealership licence is issued in joint names, death of one dealer cannot terminate the dealership straightaway. The surviving dealer shall be entitled to apply for licence in his own name in such a situation, in the absence of any contrary provision in the Control Order. If the deceased dealer has any legal heir as per the aforesaid memorandum, such legal heir may be entitled to be inducted in the dealership business as per the exiting norm.

The petitioner''s prayer for grant of licence in his own name, however, has been rejected on the ground of dissolution of the partnership firm on death of one partner, where the total number of partners were two. Since the licence in this case was granted in joint names of the petitioner and his deceased sister and not in firm name, I do not think principle of dissolution of partnership can be applied in the instant case. It is not clear to this Court on what basis the deed of partnership was executed and to what extent the authorities relied on the same, but the fact remains that licence was issued jointly, in favour of the petitioner and his deceased sister.

5. So far as the present proceeding is concerned, however, there is already a finding of this Court that the licence was issued to the firm, whatever nomenclature may have been used in the memorandum of 1st September, 2005. There was an earlier dispute between the petitioner and the predecessor of the respondent Nos. 6 & 7, when the predecessor of the said respondents had declined to sign applications for renewal of the licence. Dealing with the same fair price shop, this Court had held that signature of one of the partners would be sufficient to extend or renew the licence, relying on established principle pertaining to business run on partnership. It was held in the said judgment:-

In the Control Order I do not find there is any requirement for joint signature of the partners. Since the licence was given to the firm on the basis of deed of partnership, whatever be the nomenclature for describing the petitioner and the respondent No. 6, subsistence (sic) the licence was given to a partnership firm. Under the Law of Partnership, there is no requirement that each partner has to sign the documents which are required to be filed on behalf of the firm. On the other hand, u/s 18 of the Partnership Act 1932, each partner of the firm is entitled to act as agent of other partner/partners.

6. On the same issue, there is an authority of this Court (W.P. No. 4443 (W) of 2011 ? Godabari Devi Vs. The State of West Bengal & Ors. ? decided on 08.02.2013) and in this judgment it has been held:-

A partnership concern, which has been created by a clear expression of will and intent by two individuals or more, can continue to be in existence so long as the will of those individuals to remain joined as partners subsists. In the absence of such will to continue with the partnership agreement, the same shall stand dissolved automatically.

In the facts of the instant case, as observed hereinbefore, the legal heirs of the deceased partner have clearly and unequivocally expressed their desire of not joining with the writ petitioner for the purpose of applying before the concerned authority of the Food & Supplies Department, Government of West Bengal, for revalidation or renewal of the licence, which was originally issued in the name of the partnership concern.

In such circumstances, the writ petitioner''s prayer to allow her to continue to run the Fair Price Shop ? under Amherst Street sub-area ? in her individual name, cannot be granted.

7. In the instant case, thus there is already a finding of this Court that the dealership licence belonged to a partnership firm. There being only two partners of the firm, the partnership has dissolved on death of the predecessor of the respondent Nos. 6 & 7. The writ petitioner cannot seek a mandatory direction on the food & supplies authorities requiring them to issue licence as the surviving partner, the firm having been dissolved. The guideline relating to compassionate appointment cannot apply in this case. No provision of the Control Order or any departmental circular mandates appointment of sole surviving member of a dissolved partnership firm as a licencee of a fair price shop in a case where the licence was issued to the firm. Even though the licence records the names of the petitioner and the predecessor of the private respondents and not the firm name, as it appears from the copy of the licence annexed as "P2" to the writ petition, the same document endorses that it was a case of partnership firm, by a tick mark on the expression "partnership firm". The ratio of the decision of this Court in the case of Amitava Datta (supra) does not apply in the factual context of this case, as in respect of the subject-licence, it is not in dispute that the same was issued in favour of the firm. It was also contended on behalf of the petitioner that under the Control Order, death of a partner does not automatically create a vacancy. But in this case, the licencee was a partnership firm having two partners. In such a situation, the firm stands dissolved on the death of a partner. The licence also cannot survive on dissolution of the firm.

8. Accordingly the writ petition accordingly shall stand dismissed. The authorities shall to take steps for declaring the vacancies and for appointing dealer for the subject fair price shop.

9. There shall be no order as to costs. Urgent photostat certified copy of this order be given to the parties expeditiously, if applied for.

